IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 790 OF 2005

Shri Sahebrao Tukaram Tapkir & ors. ... Appellants

V/s

Shri Baban Maruti Tapkir & ors. ... Respondents

Mr. S.J. Rairkar for the appellants.

Mr. A.A. Kumbhakoni with Smt. Chandana Salgaonkar for respondent Nos. 1 to 7.

Mrs. G.P. Mulekar, A.G.P. for Respondent Nos. 8 & 9.

CORAM: P.V. KAKADE, J.

DATED: 14TH OCT., 2005

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith by consent of the parties.

The appeal was placed for admission, however, in view of the facts and circumstances, it was agreed that the appeal should be heard finally at the stage of admission and accordingly the appeal was heard finally after the receipt of record and proceedings and filing of compilation of relevant documents on record.

2. The appellants have preferred this appeal against the judgment and order passed by the 5th Ad-hoc Addl. District Judge, Pune, dated 21.10.2003 allowing the appeal and setting aside the judgment and order passed by the Civil Judge, S.D., Pune, in Civil Suit No. 1983 of 1994 who had dismissed the suit. The lower appellate Court decreed the suit for partition determining the shares of the parties with directions for consequential reliefs.

3. The facts involved in the dispute, in a nut-shell, are thus -

In all 24 agricultural lands located at Baner, Tal. Haveli are involved in this suit. The original ancestor of the parties was one Mr. Bhiku Khandu who died on 6.2.1928 leaving behind 3 sons, namely, Nama, Tukaram and Maruti. The present plaintiffs are descendants of Nama and Maroti who have sued the legal heirs of Tukaram. The plaintiffs have claimed that they are the members of joint Hindu family alongwith the defendants. There was huge property belonging to their joint family at Village Mulkhed, Tal. Mulshi, and it was cultivated by all of them. Therefore the plaintiffs and defendants

were taking income out of these lands. During the life time of Nama, Tukaram and Maruti, the suit lands were purchased out of joint family funds, but for the convenience of the family, Nama and Maruti were shown as Karta of the joint family for the lands at Mulkhed, while the lands at Baner were entered in the name of Tukaram. Thus, Tukaram was cultivating the suit lands of the joint family and the income was shared by all. Therefore, all the parties to the suit are alleged to have right and interest in the properties located at Baner which are the suit properties.

In the year 1982, defendant No.5 Nathu filed one Civil Suit No. 1382 of 1982 in the Civil Court at Pune for partition and separate possession of the agricultural lands and house properties belonging to the joint family situated at Mulkhed. However, in that suit, the agricultural lands at Baner i.e. present suit properties were not included for partition. Thus, the suit properties allegedly remained as joint family properties. The Civil Suit No. 1382 of 1982 was decreed on 28.8.1986. The present plaintiff Nos. 1 to 5 preferred Civil Appeal No. 1386 of 1986 against that judgment and decree in the District Court. During the pendency of that appeal, they also filed an application

in the appellate Court dated 10.4.1992 for amendment of the written statement and sought to include the properties at Baner in that proceeding. However, that application was rejected. Against that order, the appeal is said to be pending in the High Court. In the year 1992, present defendant Nos. 6 to 10 started disposing of the properties at Baner and hence the plaintiffs demanded partition and separate possession of their share in these lands from the defendant Nos. 6 to 10. However, they avoided to give any share to the plaintiffs in the suit. Hence, the plaintiffs have alleged to have constrained to file the suit for partition, possession and perpetual injunction.

4. Defendant No.5 Nathu filed written statement denying the claims of the plaintiffs contending that the suit properties exclusively belong to defendant Nos. 6 to 25.

Defendant Nos. 6 to 25 who are present appellants filed their joint written statement at Exh.30 contending that the suit was bad for non-joinder of daughters of deceased Nama and deceased Maruti. The description of the land was also disputed. It was an admitted position that the joint family owned lands at village Mulkhed,

however, for partition of those lands, Nana had filed a suit in the year 1982 and the shares were determined by the Court in that proceeding. However, they denied that the suit lands belong to joint family of the parties to the suit. It is the case of the defendants that, prior to about 60 years or so, Tukaram shifted to Baner i.e. the village of his in-laws. He started cultivating the suit lands as a tenant. Most of these lands were owned by Chinchwad Deosthan. However, on 9.1.1973, Tukaram's son defendant No.6 Sahebrao purchased the lands from the Deosthan. While the lands Survey Nos. 54/12, 91/3 and 93/1 were purchased by the defendants out of their own income on 12.9.1980, while remaining suit properties were purchased by deceased Tukaram as per the provisions of Sec.32-G of the B.T. & A.L. Act. Therefore, all the suit lands are self-acquired properties of defendant Nos. 6 to 25 and the plaintiffs have no right or interest therein. Hence the suit was sought to be dismissed.

5. On the basis of these pleadings, the learned Trial Judge adjudicated the dispute on merits on the basis of available evidence which consisted of plaintiffs' one witness, defendant No.5 himself and one witness on behalf of defendant Nos. 6 to 25 alongwith documentary

evidence.

The Trial Court held that the plaintiffs had failed to prove that suit properties were joint family properties. It was further held that plaintiffs failed to prove that the plaintiffs and defendants jointly enjoyed the income from the suit lands. It was also held that the plaintiffs were not entitled to the decree of partition and separate possession and other consequential reliefs. On the other hand, it was held that defendants 1 to 22 and 25 had proved that part of the suit properties were purchased by defendants from their own income vide registered sale deed dated 9.1.1973. It was further held that the said defendants had become exclusive owners of part of the suit properties by virtue of Sec.32-G of the B.T. & A.L. Act and further it was held that said defendants had proved that remaining lands were purchased vide registered sale deed and, as such, the suit came to be dismissed.

The appeal was carried to the District Court. The learned Addl. District Judge, after hearing both parties, came to the conclusion that the available evidence was sufficient to hold that the suit properties were joint family properties owned by plaintiffs and

defendants 5 to 25 and, therefore, plaintiffs were entitled for the partition and separate possession of the suit lands and it was further held that the suit was not bad for non-joinder of necessary parties and appeal came to be allowed setting aside the order passed by the Trial Court. Hence the present appeal.

6. I have learned counsel for both parties at length with whose assistance I have also perused the entire evidence on record.

At the outset, the moot question round which the entire dispute revolves is, regarding the status of the suit property. In other words, whether the suit property is joint Hindu family property belonging to the plaintiffs and defendants or self-acquired property exclusively owned by contesting defendants who are decendants of Tukaram. This is the substantial question involved in this appeal. The next question involved which is required to be determined is, whether the suit is barred by the provision of Order 2 Rule 2 of the C.P.C. In my considered view, adjudication of these two issues would determine the fate of the appeal. The lower appellate Court has come to the conclusion that the suit properties at Baner is the property belonging to the

joint Hindu family of the parties. It was further held that the suit is not barred by the provisions of Order 2 Rule 2 of the C.P.C. and, therefore, these aspects are required to be addressed presently.

7. The plaintiffs have come with the case that the joint family of the parties owned huge properties at village Mulkhed in Tal. Haveli and were cultivated by all of them, and all used to get income out of these lands at Mulkhed. However, for the convenience of the family, Nama and Maruti were shown as Karta of the joint family for the benefit of joint family, while the lands at Baner were entered in the name of Tukaram. According to the plaintiffs, Tukaram was cultivating suit properties for the joint family and was getting income there-from. On the other hand, it is the case of the defendants that Tukaram separated from the joint family and shifted his residence to the place of his in-laws Wadkar family at Baner 60 years prior to the suit and started cultivating the suit lands as a tenant. Most of these lands were owned by Chinchwad Deosthan, however, on 9.1.1973 Tukaram’s son Sahebrao purchased the lands from Deosthan, while the lands at Survey Nos. 54/12, 91/3 and 93/1 were purchased by the defendants out of their own income on 12.9.1980 while remaining suit

properties were purchased by deceased Tukaram under the provision of Sec.32-G of the B.T. & A.L. Act and, therefore, all the properties at Baner are from self-acquired properties and plaintiffs have no concern therewith.

8. At this juncture, it must be noted that, in the year 1982 defendant No.5 Nathu had filed Civil Suit No. 1382 of 1982 in Civil Court at Pune for this very relief i.e. for partition and separate possession of the agriclutural lands and house property belonging to joint family situated at Mulkhed. However, in that suit the suit properties at Baner were not included for partition. That suit was decreed in the year 1986. The appeal was preferred in that matter and pending the appeal present plaintiffs had filed an application dated 10.4.1992 for amendment of the written statement in order to seek inclusion of the present suit properties in that proceeding. However, that application came to be rejected by the Court. On this factual matrix, we are required to determine the legalities of the cases of the respective parties.

9. The learned counsel for the appellants submitted that the properties at Baner i.e. suit properties, were

self-acquired properties of the present appellant/defendants and plaintiffs/respondents had no concern therewith at any time. Referring to the evidence of DW Gulabrao for defendants, it was submitted that defendants' deceased father shifted to village Baner in the year 1928 i.e. parental home of Tukaram's wife. Tukaram's wife's father's name was Hari Wadkar. In the beginning, Tukaram did business of milk selling at Baner and thereafter Wadkar asked Tukaram to cultivate his lands. Accordingly, Tukaram started cultivating the land at Baner and some of the lands were tenanted lands and onwer of the lands was one Bhide. Tukaram started cultivation of the said land individually and not by any joint family. The aforesaid land owned by Bhide had been acquired by Tukaram and some of the lands were purchased by defendant No.6 Sahebrao, other son of Tukaram. Tukaram was not alive when the lands belonging to Chinchwad Deosthan were purchased by the defendants. According to the defendants, all other lands were acquired by them in view of the provision of Sec.32-G of the B.T. & A.L. Act and they have received certificate in that respect from the revenue authorities which is part of the record. In other words, sthe joint family consisting of plaintiffs had no concern with Baner suit properties at

any time. As against this, it was submitted on behalf of the respondents/plaintiffs that Tukaram was enjoying income from the properties at Mulkhed and the income derived from Mulkhed properties formed the nucleus in order to acquire suit properties at Baner and, therefore, suit properties are joint family properties belonging to the parties. In view of this position, the learned lower Court Judge, on the basis of available evidence, accepted the contentions of the defendants on the basis of available evidence holding the suit properties were self-acquired properties of the defendants. However, the lower appellate court has reversed the finding holding that the properties are joint. The lower appellate court, relying upon the principles of Hindu Law, was of the view that, where it was established or admitted that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the presumption arises that it was joint property. The burden shifts on the party alleging self acquisition to establish affirmatively that the property was acquired without the aid of joint family. On the basis of this principle, it was held that the evidence on record was sufficient to hold that property at Mulkhed was

sufficiently large to provide income to Tukaram to purchase the properties at Baner and, therefore, suit properties are joint family properties as the burden to prove that those are self-acquired properties is not discharged by defendants with any evidence. However, on critical perusal of the entire evidence vis-a-vis the legal provision, I prefer to disagree with the findings recorded by the lower appellate Court.

10. The Apex Court in catena of judgments has settled the relevant law. In the case of **D.S.Lakshmaiah & anr. v/s L. Balsubramanyam & anr., reported in 2003 S.A.R. (Civil) 817,** the Apex Court had taken survey of various earlier decisions on the said point and laid down legal principles to the effect that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. One who asserts has to prove that the property is a joint family property. If, however, the persons who asserting to prove that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchsed the property with his own funds

and not out of joint family nucleus that was available. While laying down this law, the apex Court has also referred to its earlier decision in the case of **Mudi Gowda gowdappa Sankh v/s Ram Chandra Ravagowda Sankh (1969) 1 SCC 386,** wherein it is observed that no doubt that if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. **This is, however, subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate.**(emphasis supplied).

Then again in the case of **Baikuntha Nath, Paramanik v/s Sashi Bhusan Pramanik reported in (1978) 2 SCC 334,** it was held that when a joint family is found to be in possession of nucleus **sufficient** to make the impugned acquisitions, then a presumption arises that the acquisitions standing in the names of the persons who were in the management of the family properties are

family acquisitions.

In the case of **Achuthan Nair v/s Chinnammu Amma & ors., reported in A.I.R. 1966 SC 411**, it was observed that, when it is proved or admitted that family possessed **sufficient** nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus.

11. Therefore, it is obvious that initial burden is upon the plaintiffs to establish that, not only there was nucleus available for Tukaram to purchase the suit properties at Baner, but it is also necessary to prove that the said nucleus was available, it was adequate and was applied to obtain suit properties. In my considered view, if these aspects are proved by the plaintiffs, then and then the burden would shift on the defendants to prove that the suit properties are self-acquired properties. In this regard, the entire evidence reflects that the plaintiffs have failed to prove that such nucleus was available for Tukaram to obtain the suit properties. Then, even if it is assumed for a

moment that the plaintiffs have discharged initial burden, even then the defendants' evidence is more than sufficient to show that the suit properties were acquired by them from their own income and without having any aid from the joint family property at Mulkhed.

12. Perusal of the judgment of the lower appellate Court shows that, the learned Judge has fallen in obvious error in holding that when existence of Mulkhed property was proved or admitted, which was joint family properties, then the burden is automatically discharged by the plaintiffs to show that Tukaram had used income from Mulkhed property to acquired suit properties at Baner, which is not the state of facts as revealed from the evidence. Firstly, we must note that there is sufficient evidence on record to show that Tukaram shifted from Mulkhed to Baner in the year 1928 to the place of his in-laws and started cultivation of lands belonging to in-laws as well as those lands belonging to Chinchwad Deosthan. Subsequently, it is also evident that, after the death of Tukaram, present defendants acquired part of the suit properties out of their own income as can be seen from the registered sale deed on record as well as revenue records produced in the suit.

On the other hand, mere existence of joint family property at Mulkhed cannot allow us to jump to the conclusion that Tukaram was getting income from said joint family property unless the evidence is led to that effect. When admittedly Tukaram shifted from Mulkhed to Baner in 1928 and started cultivating tenancy lands of his father-in-law, then it was for the plaintiffs to establish, firstly, that there was sufficient income derived from Mulkhed properties; secondly, it was made available specifically to Tukaram to purchase the properties at Baner; and thirdly, Tukaram applied said income derived from Mulkhed properties to acquired Baner properties. There is absolutely no evidence to show these aspects, which fact is overlooked by the lower appellate Court Judge.

In this regard, even if it is assumed that the plaintiffs have discharged initial burden to show availability and accessibility of income from Mulkhed properties to Tukaram, still the evidence on record led by defendants themselves is sufficient to show that the suit properties were acquired from their own income and there is not an iota of evidence to show that either Tukaram received income from Mulkhed properties or it was so applied while acquiring the Baner suit

properties.

The learned lower appellate Court Judge has observed that defendants did not discharge his burden to show that he had adequate resources of his own to acquire Baner suit properties. It was further observed that the evidence on record only show that Tukaram was in milk selling business and such income could not have been sufficient to acquire Baner properties. However, it appears that the lower appellate Court has overlooked the vital pieces of factual aspects of evidence in this regard. If we peruse the testimony of DW-1 Gulabrao i.e. defendant No.8, it is categorically stated by him that Tukaram started cultivating land of his father-in-law Wadkar on shifting to Baner, some of the lands of Wadkar of his ownership and some of the lands by Tenancy Law. Tukaram started cultivating of lands on tenancy basis individually and not for joint family. The aforesaid lands owned by Bhide was acquired by Tukaram under the provisions of B.T. & A.L. Act and some of the lands owned by Chinchwad Deosthan were purchased by defendant No.6 Sahebrao after the death of Tukaram. At the time of the purchase of the said lands, defendant No.6 was serving in Ammunition Factory Kirkee. The said land was purchased in the name of defendant

Nos. 6, 7 and 10. Defendant Nos. 7 and 10 were also in the service at that time and said defendants 6, 7 and 10 were having sufficient income from their salary by which said lands were purchased by defendant No.6. The original sale deed executed in favour of defendant No.6 is at Exhs.66/42 which is produced on record. They also purchased some lands in the name of defendant No.6 from maternal uncle Rambhau Wadkarn Narayan Hari Wadkar and Sayaji Baburao Wadkar, regarding which the sale deed is at Exh.66/41. Remaining lands were acquired under Sec.32-G of the Act for which they had received certificate issued by Addl. Tahsildar, Haveli. Significantly enough, this statement made by witness Gulabrao is not at all challenged by the plaintiffs initially. There is not a whisper of even suggestion put to him in cross-examination denying that defendants 6, 7 and 10 were serving and having adequate income to acquire part of the properties. Therefore, the statement of Gulabrao made to the effect that properties are purchased from their own income by defendant Nos. 6, 7 and 10 in the name of defendant No.6 has gone unchallenged and has to be accepted as substantive evidence on record to rebutt the presumption sought to be raised against them regarding jointness of the properties. As if it is not enough, defendant No.5 who

was plaintiff in 1982 suit, has admitted in his written statement itself that the suit properties are exclusively owned by Tukaram and his descendants i.e. present defendants and the plaintiffs have no concern therewith. On the other hand, if we peruse the evidence led on behalf of the plaintiffs' witness PW-1 who has deposed for all the plaintiffs, it is clear that he has absolutely no personal knowledge regarding the disputed aspects and on the other hand he has admitted that it is correct to say that name of Tukaram was only connected as tenant of the lands at Baner. He has further admitted that the certificate issued under Sec. 32-G was in the name of deceased Tukaram. Further he has admitted that name of Tukaram was also mutated in the 7/12 extract register and after his death his sons defendants 6 to 10 were entered in the 7/12 extract. He has admitted that neither himself nor his father, during their life time had made any application for entering their names in the record of rights of thek of the aforesaid lands at Baner. He has also feigned ignorance regarding the sale deeds produced on behalf of the defendants on record regarding suit properties and, therefore, suffice to say that the evidence led on behalf of the plaintiffs is too inadequate to hold that they have discharged initial burden either to prove that

income from Mulkhed property was available and accessible to Tukaram and the Baner suit properties were purchased from such nucleus available.

It must also be noted that in the earlier suit Shankar Nama i.e. present plaintiff No.6 had deposed on behalf of defendants 3 to 10 in that suit wherein he had deposed on oath that partition of ancestral property in between his father and defendant No.10 and deceased Tukaram had taken place about 50 years ago. His father and only defendant No.10 were cultivating 1/3 share of Tukaram also. Tukaram thereafter sold 1/3 to his father and defendant No.10 in the year 1958 by sale deed was purchased but it was not registered. In view of this position, now it cannot lie in the mouth of the present plaintiffs that Tukaram continued to take income from Mulkhed properties and, therefore, there is no question of nucleaus being available to Tukaram from Mulkhed property at all.

13. In view of this position, I have no doubt whatsoever that the plaintiffs have failed to discharge initial burden to establish that the suit properties are joint family properties and further the defendants' own evidence is more than sufficient to show that the Baner

suit properties are their self-acquired properties and thus I hold that the findings recorded in that regard by the lower appellate Court is erroneous and, therefore, is required to be set aside.

14. Then comes the question whether the suit is barred by the provision of Order 2 Rule 2 of the C.P.C. This controversy has arisen due to the fact that the present defendant No.5 had filed Civil Suit No. 1382 of 1982 in Civil Court, Pune, for partition and separate possession of agricultural lands and house property belonging to joint family of the parties located at Mulkhed. However, in that suit, suit properties at Baner were not included for partition. Evidently, the Civil Suit of 1982 was decreed and appeal was filed being Civil Appeal No. 1386 of 1986 against that judgment and decree in that suit. During the pendency of that appeal, the present plaintiffs had made an application dated 10.4.1992 for amendment of their written statement and sought to include the suit properties at Baner in that proceeding, however, that application was rejected. On this factual matrix, the question arises whether the contention taken by the present appellans to the effect that the suit is barred by the provision of Order 2 Rule 2 is acceptable or not.

In this regard, it must be noted that the previous suit of 1982 was also for partition and separate possession of respective shares of the joint family properties at Mulkhed. It is also an admitted position that the parties in this suit were parties in that suit. The suit property was evidently not included in that suit throughout the proceeding in the Trial Court. After the decree was passed, the appeal was filed and in that appeal an application was made to include the suit properties at Baner but that application came to be rejected. Now the provision of Order 2 Rule 2 stipulates that,

> "Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished."

The learned counsel for the respondents vehemently urged that the present respondents were not the plaintiffs in that earlier suit and, therefore, Order 2 Rule 2 would not be applicable to the present case because it applied to the plaintiffs only. However, in this regard, it is

well settled law that in a suit for partition every party is in the place of plaintiff and is entitled to relief claimed and, therefore, it cannot lie in the mouth of the present respondents that the said provision of Order 2 Rule2 is not applicable to the present case.

The test to be applied to see whether the bar of Order 2 Rule 2 is attracted or not, are - (i) whether the cause of action in the previous suit and the subsequent suit is identical; (2) whether the relief claimed in the subsequent suit could have been given in the previous suit on the basis of the pleadings made in the plaint; and (iii) whether the plaintiffs omitted to sue for a particular relief on the cause of action which has been disclosed in the previous suit. In my considered view, all the tests stipulated above are indeed applicable to the present dispute. The earlier suit was also for partition and separate possession of the joint family properties wherein a specific stand was taken that joint family properties consisted of the properties located at Mulkhed only. In other words, the parties were conscious of the fact that the suit properties of Baner were not the properties belonging to the joint family. Such consciousness is apparent from the subsequent steps taken by them when they sought amendment to the written

statement in the pending civil appeal in the District Court. However, that application came to be rejected and, therefore, as the matters stands today, the fact remains that the relief claimed in the present suit could have been given in the previous suit on the basis of the pleadings made in the plaint. But parties omitted to sue for particular relief on the cause of action which has been disclosed in the previous suit.

The learned lower appellate Court has discarded the argument advanced on behalf of the appellants in this regard on the ground that properties at Baner were excluded from the partition in earlier suit, "may be by mistake/accident, or it may be by wrong presumption between the members of the family that the properties at Baner belong to Tukaram, while the properties at Mulkhed belong to only Nama and Maruti". It was further observed that wrong or mistaken contention taken by the plaintiffs was rejected by the Court and, therefore, there cannot be bar of Order 2 Rule 2 of C.P.C. In my considered view, the reasons given by the lower appellate Court to discard the argument on behalf of the appellant in this regard are totally erroneous and misconceived. The disputes cannot be adjudicated on surmises and conjunctures to the effect that the

omission must be by mistake or accident. Suffice to say, therefore, the finding recorded by the lower appellate Court that suit is not barred by provision of Order 2 Rule 2 of C.P.C. is also required to be set aside and the bar, in my view, clearly applies to the present suit. In this regard, it must be noted that, it appears that it was urged in the lower courts that while application to amend the written statement was rejected by the District Court in the earlier appeal to include the suit properties, permission to file fresh suit in that regard for partition was given to the present plaintiffs. However, copy of the application and order thereon was made available for my perusal and it is clearly seen that no such permission is given to file the fresh suit for partition in respect of present suit properties by the earlier Courts.

The learned counsel for the appellants also submitted that the suit was bad for non-joinder of necessary parties. However, without further elaboration, I must note that the lower appellate Court has held that the suit is not bad for non-joinder of necessary parties i.e. sisters of concerned parties and perusal of the reasoning in that regard, I would agree that the observations made by the lower appellate Court to that

extent and hold that the suit is not rendered bad for non-joinder of necessary parties.

15. For the reasons recorded above, I hold that the plaintiffs have failed to prove that the suit properties are joint family properties belonging to the plaintiffs and defendants. On the other hand, defendants' evidence is sufficient to show that the suit properties are self-acquired properties of Tukaram as well as defendants and the plaintiffs have no concern therewith. Except for these aspects, no other substantial question of law is involved in this appeal and thus I proceed to pass the following order.

O R D E R

1. Rule is made absolute.

2. The appeal is hereby allowed. The judgment and order passed by the Ad-hoc Addl. District Judge, Pune, dated 21.10.2003 is hereby set aside and order passed by the Joint Civil Judge, S.D., Pune, dated 7.8.2001 dismissing the suit is restored.

3. In view of the facts and circumstances, there shall be no order as to costs.

4. At this stage, the learned counsel for the respondent prayed for continuation of the order passed on 17th August, 2005 to maintain status-quo. The lealrned counsel for the appellant, in whose favour the order allowing the appeal is passed, objected to the said plea on the ground that technically there is no decree to be executed and, therefore, there need not be any order in such manner. However, in the interest of justice, it is hereby directed that an order to maintain status-quo passed on 17th August, 2005 shall stands continued for a period of six weeks.

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